chronicity. Doctor Brockway's method of handling these cases by the use of stimulating saline baths is to me a most excellent one.

SAMUEL S. MATHEW, M. D. (1913 Wilshire Medical Building, Los Angeles).—Doctor Brockway's results in the treatment of suppurative arthritis without bone involvement, by means of salt water pool treatment, are indeed gratifying. Just what part the pool treatment itself played in these excellent results is, however, hard to estimate. It has been my feeling that the prognosis for return of motion in an involved joint depends, to a great extent, on the organism present and what destruction has already taken place in reference to the articular cartilage. We often see, particularly in children, those cases in which the knee is swollen, with moderate amount of local heat, and associated with but little constitutional reaction. On incising such joints and thoroughly washing them out with large quantities of normal warm saline solution, the prognosis is good for full return of motion, the motion itself being started as the local symptoms subside. Then there are such cases where the invading organism is far more destructive and there has been a greater change in the joint, primarily due to delayed drainage. Our prognosis here is poor for return of normal function, regardless of our after-care. I have always felt that in either case active motion should not be started until local symptoms have subsided, because we are dealing with a diseased joint which should be kept at rest during its acute stage. Doctor Brockway has suggested an easy method of starting early motion by pool treatment, but he has emphasized that such early motion should be done without causing muscle spasm or pain. What importance we can place upon the use of salt water in such pool treatment I cannot state, because I feel that motion should not be started until, as I save said, the disease process has quieted down sufficiently.

CAN THE STATE EXAMINE PEOPLE ENTERING THE STATE WHO MAY BE SUSPECTED OF HAVING AN INFECTIOUS DISEASE?

OPINION OF THE ATTORNEY-GENERAL OF CALIFORNIA: IN RESPONSE TO REQUEST FROM STATE BOARD OF HEALTH

In the January issue of CALIFORNIA AND WESTERN MEDICINE, editorial comment was made on "Indigent Camps in California: A New and Pressing Problem." (See page 2 of January CALIFORNIA AND WESTERN MEDICINE and also comment in this number, on page 146.)

The opinion rendered by Attorney-General U. S. Webb and Deputy Attorney-General Leon French contains much general and specific information of interest to members of the medical profession, and is, therefore, printed in full.

STATE OF CALIFORNIA
LEGAL DEPARTMENT

San Francisco, February 10, 1937.

Honorable Walter M. Dickie
Director, Department of Public Health
San Francisco, California

Dear Sir:

I have before me your communication under date of October 27, 1936, which is as follows:

It has been estimated that during the last two years somewhere in the neighborhood of 200,000 itinerant people have moved into California from the middle-western states and are now located in itinerant camps and government resettlement camps in the State of California. Many of these people are suffering from infectious diseases, namely, tuberculosis, trachoma, dysentery, typhoid fever, etc., all of which are a menace to the people of the State of California, for the reason that these migratory people are not entitled to institutional nor medical care in the counties in which they are located, because of lack of residence.

In order that this condition may not be continued indefinitely, I would respectfully request the following opinion: Does the State Department of Public Health have the right under the law to examine people entering the State who may be suspected of having an infectious disease? If they have not sufficient funds to provide proper institutional or hospital care, can they be denied permission to enter the State?

There is on the statutes, as you know, "an Act to prevent introduction of contagious diseases into the State," approved March 15, 1883, but this refers only to train service, I believe.

As the questions which you submit are of major importance not only to the people of the State of California but also to the individuals coming to the State of California from other states, such questions have been given very careful and detailed consideration, particularly in view of the fact that, so far as the reports indicate, these questions have not received a definite determination by any court of last resort in this state. The question of exclusion was, however, considered in the case of *State* vs. *S. S. "Constitution,"* 42 Cal. 578, to which reference is hereafter made.

Perhaps the most enlightening cases to be found upon the subject of your communication are the so-called "Passenger Cases," decided by the Supreme Court of the United States at the January term in 1849 and reported in the seventh volume of Howard's Reports (48 U. S.) at page 283. The Passenger Cases were two kindred cases argued together before the United States Supreme Court, entitled, respectively, *Norris* vs. *The City of Boston* and *Smith* vs. *Turner*. They involved acts of the State of Massachusetts and the State of New York, respectively, relating particularly to the admission within their boundaries of passengers arriving by water at the ports thereof.

Each of the Passenger Cases was argued no less than three times before the Supreme Court of the United States, finally resulting in a decision by a bare majority of the nine justices declaring both the act of the State of Massachusetts and that of the State of New York unconstitutional and, therefore, void because of imposing a burden or regulation upon "commerce with foreign nations, and among the several states, . . ."

(Article I, Section 8, United States Constitution.)

However, in spite of such full argument and careful and lengthy consideration, there was no opinion of the court, as a court, filed in either of these cases. Each of the nine justices, with the exception of Mr. Justice Nelson, filed a lengthy opinion, and Mr. Justice Nelson expressly concurred not only in the conclusions but in the grounds and principles set forth at length in the dissenting opinion of Mr. Chief Justice Taney.

Throughout the report of these cases—covering some 290 pages—are found many and repeated expressions, both in the arguments and in nearly all of the opinions, expressly setting forth and maintaining the right of a state, under its retained police power, to exclude from its boundaries persons arriving thereat from either foreign countries or sister states within the Union where such exclusion was clearly based upon the retained police power and was clearly for the purpose of guarding against the introduction of any thing or person which might corrupt the morals or endanger the health or lives of the citizens of the excluding state.

Upon this principle the report of the "Passenger Cases," *supra,* indicates that every one of the eminent counsel engaged in the argument thereof, as well as every one of the nine justices of the Supreme Court of the United States, concurred.

A few of the many statements found in the opinions of the several justices, and which appear most clearly and definitely in point, will be quoted. For example: Mr. Justice McLean said (page 400):

In giving the commercial power to Congress, the States did not part with that power of self-preservation which must be inherent in every organized community. They may guard against the introduction of anything which may corrupt the morals, or endanger the health or lives of their citizens. Quarantine or health laws have been passed by the states, and regulations of police for their protection and welfare.

Mr. Chief Justice Taney, in his opinion (page 467), said:

I think it, therefore, to be very clear, both upon principle and the authority of adjudged cases, that the several states have a right to remove from among their people, and to prevent from entering the state, any person, or class or description of persons, whom it may deem dangerous or injurious to the interests and welfare of its citizens; and that the state has the exclusive right to determine, in its sound discretion, whether the danger does or does not exist, free from the control of the general government.

Mr. Justice Woodbury, in his opinion (page 525), stated:

The best writers on national law, as well as our own decisions, show that this power of excluding emigrants exists in all states which are sovereign.

He further said (page 528):

Again, considering the power to forbid as existing absolutely in a state, it is for the state where the power resides to decide on what is sufficient cause for it, whether municipal or economical, sickness or crime; as, for example, danger of pauperism, danger to health, danger to morals, danger to property, danger to public principles by revolutions and change of government, or danger to religion.

As to the extension of this right of exclusion to those coming from another state within the Union, Mr. Justice Woodbury further stated (page 529):

As a question of international law, also, they could do the same as to the citizens of other states, if not prevented by other clauses in the Constitution reserving to them certain rights over the whole Union, and which probably protect them from any legislation which does not at least press as hard on their own citizens as on those of other states.

Upon this same point he further said (page 543):

The states have been in the constant habit of prohibiting the introduction of paupers, convicts, free blacks, and persons sick with contagious diseases, no less than slaves; and this from neighboring states as well as from abroad.

Upon this same question, Mr. Justice Mathews of the United States Supreme Court, in delivering the opinion of the court in the case of *Bowman* vs. *Chicago, etc., Ry. Co.,* 125 U. S. 465, at page 492, quoted with approval from the opinion in the case of *Railroad Co.* vs. *Husen,* 95 U. S. 465, 471, where it was said:

It may also be admitted, . . . that the police power of a state justifies the adoption of precautionary measures against social evils. Under it a state may legislate to prevent the spread of crime, or pauperism, or disturbance of the peace. It may exclude from its limits convicts, paupers, idiots, and lunatics, and persons likely to become a public charge, as well as persons afflicted by contagious or infectious diseases; a right founded, as intimated in *The Passenger Cases,* 7 How. 283, by Mr. Justice Grier, in the sacred law of self-defense. . . .

Reference should also be made to the case of *Jacobson* vs. *Massachusetts,* 197 U. S. 11, decided in 1905, in which the Supreme Court of the United States had under consideration questions involving the validity, under the Constitution of the United States, of certain provisions of the statutes of Massachusetts relating to vaccination.

Mr. Justice Harlan, delivering the opinion of the court, said in part (page 28, *et seq.*):

In *Railroad Company* vs. *Husen,* 95 U. S. 465, 471-473, this court recognized the right of a state to pass sanitary laws, laws for the protection of life, liberty, health, or property within its limits, laws to prevent persons and animals suffering under contagious or infectious diseases, or convicts, from coming within its borders.

See, also, *State ex rel McBride* vs. *Superior Court* (Wash.), 174 Pac. 973.

That the right of inspection and exclusion extends not only to those presenting themselves at the borders of a state in the course of travel from a foreign port, but likewise to those so presenting themselves by travel from one of the states of the Union to another thereof, seems clearly supported not only by reason, but by authority. In fact it would appear that the only limitation upon such an authorized exclusion is that the provision of law governing the same must not be more burdensome upon the citizens of a sister state seeking to enter the boundaries of the excluding state than they are upon the citizens of the excluding state itself who have been beyond its borders and seek to reënter; in other words, the same rule must apply to all.

When the law operates alike on all persons and property similarly situated, equal protection of the law cannot be said to have been denied.

Sutherland's Notes on the Constitution, page 729.

It would further appear that this police power of the state should only be exercised when public necessity demands it within reasonable and fair apprehension, and not upon mere suspicion.

29 Corpus Juris, page 253.

In the case of *State* vs. *S. S. "Constitution," supra,* the Supreme Court of the State of California had before it a proceeding *in rem,* seeking to enforce a lien upon the vessel because of the failure of the owner or consignee thereof to give a required bond or pay requisite commutation money in lieu thereof in connection with certain aliens landed at the port of San Francisco under the provisions of an Act approved May 2, 1852 (Statutes 1852, page 78), and amended by an Act of April 2, 1853 (Statutes 1853, page 71). Mr. Justice Crockett, in delivering the opinion of the court in that case, said in part (page 584):

In considering the grave question here presented, it is to be observed, *in limine,* that whatever may have been the real purpose of the statute, its ostensible purpose was to provide police and sanitary regulations, to prevent the people of this State from becoming chargeable with the support and maintenance of persons imported from foreign countries, who either then were, or were soon after, liable to become a public charge. If it were conceded that this was the real purpose of the statute, and that its provisions are reasonably adapted, and were intended to secure this result, and this only, there would be an end to the argument; for in all the numerous adjudications which have been had in respect to the power of the several states to interfere with commerce under the clauses of the Constitution above referred to, it has never been doubted that a state has the power, by proper police and sanitary regulations, to exclude from its limits paupers, vagabonds, and criminals, or sick, diseased, infirm, and disabled persons, who were liable to become a public charge, or to admit them only on such terms as would prevent the State from being burdened with their support. To surrender this power would be to abandon one of the highest prerogatives of local self-government, one of the chief functions of which is to preserve the public health and to repress crime. . . . The power to make police or sanitary regulations prescribing the terms on which certain classes of persons shall be admitted into this State, necessarily includes the power to exclude them altogether if they fail to comply with the prescribed conditions.

Section 14 of Article XX of the Constitution of the State of California provides:

The legislature shall provide, by law, for the maintenance and efficiency of a state board of health.

The foregoing mandate of the Constitution is complied with in the enactment of Sections 343, 368, 372 to 372g, inclusive, and 2978 to 2984, inclusive, of the Political Code.

Under the provisions of Section 2979 of the Political Code the State Board of Health—the predecessor in power and duty of the Department of Public Health—is expressly required to "examine into the causes of communicable diseases in *man* and domestic animals occurring or likely to occur in this state."

It is further provided that "it may quarantine or isolate, inspect and disinfect persons, animals, property and things of whatever nature, and houses, rooms, places, cities or localities, whenever in the judgment of said board or pending its meeting, whenever in the judgment of its executive officer such action shall be deemed necessary to protect or preserve the public health; . . . "

It is further provided in said section that "it may establish and maintain places of quarantine or isolation."

Section 2979 further provides:

It shall have general power of inspection, examination, quarantine and disinfection of persons, places and things, within the state, and for the purpose of conducting the same may appoint inspectors, who, under the direction of the board, shall be vested with like powers; provided that this Act shall in no wise conflict with the national quarantine laws.

By the same section authority is conferred "to adopt and enforce rules and regulations for the execution of its duties under this section. . . ."

By Section 2979a of the Political Code it is provided that when the State Board of Health or its secretary is informed as to the existence of certain contagious or infectious diseases (including those of tuberculosis, trachoma, dysentery, and typhoid fever, referred to in your communication) it or he "may thereupon take such measures as may be necessary to ascertain the nature of such disease and prevent the spread of such contagion, and to that end, said State Board of Health, or its secretary, may, if deemed proper, take possession or control of the body of any living person, or the corpse of a deceased person, and may direct and take such means as may be deemed expedient to arrest or prevent the further spread of such disease."

Penalties for crimes against public health and for failure to conform to rules, orders and regulations respecting quarantine or disinfection of persons, are provided by the Penal Code, and particularly by Section 377a thereof.

Sections 12 and 13 of the Act of March 23, 1907 (Stats. 1907, page 893, as amended; Act 6238 of Deering's General Laws, edition of 1931) impose upon every county health officer and every city and county, city or town board of health, or chief executive health officer thereof, the duty of carrying out the directions of the State Board of Health or its secretary, with respect to quarantine and disinfection.

The Act of March 15, 1883 (Statutes 1883, page 376; Act 6243 of Deering's General Laws, edition of 1931) is, as you state in your communication, applicable only to "railroad communication with other states," and can be given no application with regard to those traveling by other means of communication or transportation.

There are, of course, many other acts dealing generally with the health of the people of the State of California and the suppression and control of contagious and infectious diseases, but it is believed unnecessary to advert here to all thereof.

While from the foregoing it would appear clear that the health authorities of the State of California have the right to inspect at the borders those coming from other nations or states into the State of California, and, under the police power, to exclude from the State of California those found to be infected or contaminated with infectious or contagious diseases dangerous to the health of the people of the State of California, it must be remembered that such burdens must be imposed equally and impartially upon all persons so presenting themselves at the boundaries of the State of California for progress into the body of this state. Further than this, any such inspections should only be made or conducted by personnel trained and qualified therefor, and not by persons who are merely peace officers or who are untrained personnel.

A further limitation upon the power of exclusion must also be noted. That is fully and carefully set forth in the reported opinion in the case of *In re Arata,* 52 Cal. App. 380, where, at page 383, it is said:

> That the health authorities possess the power to place under quarantine restrictions persons whom they have reasonable cause to believe are afflicted with infectious or contagious diseases coming within the definition set forth in Political Code, Section 2979a, as a general right, may not be questioned. It is equally true that in the exercise of this unusual power, which infringes upon the right of liberty of the individual, personal restraint can only be imposed where, under the facts as brought within the knowledge of the health authorities, *reasonable ground exists to support the belief* that the person is afflicted as claimed; and as to whether such order is justified will depend upon the facts of each individual case. Where a person so restrained of his or her liberty questions the power of the health authorities to impose such restraint, the burden is immediately upon the latter to justify by showing facts in support of the order. It might be proved, for instance, that the suspected person had been exposed to contagious or infectious influences that some person had contracted such disease from him or her, as the case might be. Such proof would furnish tangible ground for the belief that the person was afflicted as claimed. And we wish here to emphasize the proposition, which is unanswerable in law, that a mere suspicion, unsupported by facts giving rise to reasonable or probable cause, will afford no justification at all for depriving persons of their liberty and subjecting them to virtual imprisonment under a purported order of quarantine.

The provisions of the health laws and regulations must also be reasonable, although to be effective they must be prompt and summary. *County of Los Angeles* vs. *Spencer,* 126 Cal. 670, 673.

And while Section 2979a of the Political Code, *supra,* confers upon county and other health officers the right to take measures necessary to prevent the spread of disease, but does not confer upon such local health officers the right to take possession of the body of one so afflicted as it does in the case of the State Board of Health, yet nevertheless isolation of one afflicted with an infectious disease has been held to be a reasonable and proper measure to be enforced by local health authorities to prevent the increase and spread of such diseases.

In re Fisher, 74 Cal. App. 225;
In re Johnson, 40 Cal. App. 242.

For the foregoing reasons, and with the limitations set forth in connection therewith, your queries are answered in the affirmative.

Very truly yours,
U. S. WEBB, *Attorney-General.*
(Signed) By LEON FRENCH, *Deputy.*

THE LURE OF MEDICAL HISTORY†

DIPHTHERIA IN 1880: IN SISKIYOU COUNTY

By E. W. BATHURST, M.D.
Etna

IN 1877 I began practicing medicine in Sawyers Bar, Siskiyou County. This small town was dependent upon the near-by mines (placer and quartz) for its existence. Located upon a narrow strip of gravel deposit on one side of the North Fork of the Salmon River, the houses, stores, hotels, and saloons were strung along this strip of gravel for about a mile, the river some twenty to fifty feet below. As the center of the mining activities of the Salmon River section, the little town housed the wives and children of the miners engaged in the Black Bear, Klamath and quartz mines, or who stripped gravel deposits for the auriferous deposits, and was fairly prosperous. When you reached Sawyers Bar you had attained "the jumping off place." for there was no way of communicating with the outer world but by trails, over which pack-trains brought in merchandise (liquid and solid), together with our six-day mail service from Etna. In the winter, mail was transported on webbed snowshoes, a perilous job not unattended by fatalities. The nearest supply of drugs was in Etna, some twenty-six miles away, a two days' trip by mule-back, hence it behooved the Sawyers Bar medico to keep a stock of medicines on hand, particularly as there were no trained nurses, and the nearest consultant was at Etna; so at least the location taught self-reliance.

The mountainous country was well drained, the streams did not glide placidly over nearly level

†A Twenty-Five Years Ago column, made up of excerpts from the official journal of the California Medical Association of twenty-five years ago, is printed in each issue of CALIFORNIA AND WESTERN MEDICINE. The column is one of the regular features of the Miscellany department, and its page number will be found on the front cover.